

1 Scott Alan Burroughs (SBN 235718)
2 scott@donigerlawfirm.com
3 Trevor W. Barrett (SBN 287174)
4 tbarrett@donigerlawfirm.com
5 Frank R. Trechsel (SBN 312199)
6 ftrechsel@donigerlawfirm.com
7 DONIGER / BURROUGHS
8 603 Rose Avenue
9 Venice, California 90291
10 Telephone: (310) 590-1820
11 Attorneys for Plaintiff

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DR. ELLIOT MCGUCKEN, an
individual,

Plaintiff,

v.

LONELY PLANET USA, LLC, a North
Carolina limited liability company; and
Does 1-10, inclusive,

Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT
3. VIOLATIONS OF THE
DIGITAL MILLENNIUM
COPYRIGHT ACT
(17 U.S.C. §1202)

Jury Trial Demanded

1 Plaintiff, Dr. Elliot McGucken (“McGucken”), by and through his undersigned
 2 attorneys, hereby prays to this honorable Court for relief based on the following:

3 **JURISDICTION AND VENUE**

4 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., § 101
 5 *et seq.*

6 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
 7 1338 (a)-(b).

8 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
 9 1400(a) in that this is the judicial district in which a substantial part of the acts and
 10 omissions giving rise to the claims occurred.

11 **PARTIES**

12 4. Plaintiff McGucken is an individual residing in Los Angeles, California.

13 5. McGucken is informed and believes and thereon alleges that Defendant
 14 Lonely Planet USA, LLC (“Lonely Planet”) is a South Carolina limited liability
 15 company doing business in and with the Los Angeles County.

16 6. On information and belief, McGucken alleges that Defendants DOES 1
 17 through 10 (collectively, “DOE Defendants”) (altogether with Lonely Planet,
 18 “Defendants”) are other parties not yet identified who have infringed McGucken’s
 19 copyrights, have contributed to the infringement of McGucken’s copyrights, or have
 20 engaged in one or more of the wrongful practices alleged herein. The true names,
 21 whether corporate, individual or otherwise, of DOE Defendants are presently
 22 unknown to McGucken, who therefore sues said DOE Defendants by such fictitious
 23 names, and will seek leave to amend this Complaint to show their true names and
 24 capacities when same have been ascertained.

25 7. On information and belief, McGucken alleges that at all times relevant
 26 hereto each of the Defendants was the agent, affiliate, officer, director, manager,
 27 principal, alter-ego, and/or employee of the remaining Defendants and was at all

1 times acting within the scope of such agency, affiliation, alter-ego relationship and/or
2 employment; and actively participated in or subsequently ratified and adopted, or
3 both, each and all of the acts or conduct alleged, with full knowledge of all the facts
4 and circumstances, including, but not limited to, full knowledge of each and every
5 violation of McGucken's rights and the damages to McGucken proximately caused
6 thereby.

7 **CLAIMS RELATED TO MCGUCKEN'S PHOTOGRAPH**

8. McGucken is an acclaimed photographer who created and owns the
9 original photograph depicted in **Exhibit A** attached hereto ("Subject Photograph.")

10. McGucken has registered the Subject Photograph with the U.S.
11 Copyright Office.

12. Prior to the acts complained of herein, McGucken published and widely
13 publicly displayed and disseminated the Subject Photograph including without
14 limitation on McGucken's website www.mcgucken.com.

15. Following McGucken dissemination and display of the Subject
16 Photograph, Defendants, and each of them copied, reproduced, displayed, distributed,
17 created derivative works, and/or otherwise used the Subject Photograph without
18 license, authorization, or consent, including by using the Subject Photograph online
19 and/or in their published book *USA's Best Trips* ("Infringing Use") which was
20 created, published, and distributed by Lonely Planet. The Infringing Use was made
21 widely and publicly available online. True and correct, non-inclusive, screen captures
22 of the Infringing Use are included in **Exhibit B** attached hereto.

23. On information and belief it is alleged that Lonely Planet made an
24 unauthorized copy of the Subject Photograph and then cropped and edited that work
25 before adding its own name to the work and publishing same under its own name
26 and/or a false name.

1 13. McGucken has not in any way authorized Defendants, or any of them, to
2 copy, reproduce, display, distribute, create derivative works of, or otherwise use the
3 Subject Photograph.

FIRST CLAIM FOR RELIEF

(For Copyright Infringement – Against all Defendants, and Each)

6 14. McGucken repeats, re-alleges, and incorporates herein by reference as
7 though fully set forth, the allegations contained in the preceding paragraphs of this
8 Complaint.

9 15. On information and belief, McGucken alleges that Defendants, and each
10 of them, had access to the Subject Photograph, including, without limitation, through
11 (a) viewing the Subject Photograph on McGucken's website, (b) viewing Subject
12 Photograph online, and (c) viewing Subject Photograph through a third party. Access
13 is further evidenced by the Subject Photograph's exact reproduction in the Infringing
14 Use.

15 16. On information and belief, McGucken alleges that Defendants, and each
16 of them, copied, reproduced, displayed, and distributed the Subject Photograph,
17 including without limitation as seen in **Exhibit B** attached hereto.

18 17. On information and belief, McGucken alleges that Defendants, and each
19 of them, infringed McGucken's copyrights by creating infringing derivative works
20 from the Subject Photograph and publishing same to the public.

18. Due to Defendants', and each of their, acts of infringement, McGucken
has suffered general and special damages in an amount to be established at trial.

23 19. Due to Defendants', and each of their, acts of copyright infringement as
24 alleged herein, Defendants, and each of them, have obtained direct and indirect
25 profits they would not otherwise have realized but for their infringement of
26 McGucken's rights in the Subject Photograph. As such, McGucken is entitled to
27 disgorgement of Defendants' profits directly and indirectly attributable to

1 Defendants' infringement of McGucken's rights in the Subject Photograph in an
2 amount to be established at trial.

3 20. On information and belief, McGucken alleges that Defendants, and each
4 of them, have committed acts of copyright infringement, as alleged above, which
5 were willful, intentional and malicious, which further subjects Defendants, and each
6 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
7 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from
8 asserting certain equitable and other defenses.

SECOND CLAIM FOR RELIEF

**(For Vicarious and/or Contributory Copyright Infringement – Against all
Defendants, and Each)**

12 21. McGucken repeats, re-alleges, and incorporates herein by reference as
13 though fully set forth, the allegations contained in the preceding paragraphs of this
14 Complaint.

15 22. On information and belief, McGucken alleges that Defendants knowingly
16 induced, participated in, aided and abetted in and profited from the illegal
17 reproduction and distribution of the Subject Photograph as alleged hereinabove. Such
18 conduct included, without limitation, publishing photographs obtained from third
19 parties that Defendants knew, or should have known, were not authorized to be
20 published by Defendants.

21 23. On information and belief, McGucken alleges that Defendants, and each
22 of them, are vicariously liable for the infringement alleged herein because they had
23 the right and ability to supervise the infringing conduct and because they had a direct
24 financial interest in the infringing conduct. Specifically, Defendants, and each of
25 them, profited in connection with the Infringing Use, and were able to supervise the
26 distribution, broadcast, and publication of the Infringing Use.

1 24. By reason of the Defendants', and each of their, acts of contributory and
2 vicarious infringement as alleged above, McGucken has suffered general and special
3 damages in an amount to be established at trial.

4 25. Due to Defendants' acts of copyright infringement as alleged herein,
5 Defendants, and each of them, have obtained direct and indirect profits they would
6 not otherwise have realized but for their infringement of McGucken's rights in the
7 Subject Photograph. As such, McGucken is entitled to disgorgement of Defendants'
8 profits directly and indirectly attributable to Defendants' infringement of
9 McGucken's rights in the Subject Photograph, in an amount to be established at trial.

10 26. On information and belief, McGucken alleges that Defendants, and each
11 of them, have committed acts of copyright infringement, as alleged above, which
12 were willful, intentional and malicious, which further subjects Defendants, and each
13 of them, to liability for statutory damages under Section 504(c)(2) of the Copyright
14 Act in the sum of up to \$150,000.00 per infringement and/or a preclusion from
15 asserting certain equitable and other defenses.

THIRD CLAIM FOR RELIEF

**(For Violations of the Digital Millennium Copyright Act (17 U.S.C. §1202 –
Against all Defendants, and Each)**

19 27. McGucken repeats, re-alleges, and incorporates herein by reference as
20 though fully set forth, the allegations contained in the preceding paragraphs of this
21 Complaint.

22 28. McGucken regularly published the Subject Photograph with copyright
23 management information (“CMI”), as that phrase is used in 17 USC § 1202.
24 McGucken’s CMI included, without limitation, his name, company name, copyright
25 notice, metadata, and other identifying information. The CMI was prominently
26 displayed and would be viewed by visitors to McGucken’s website and online
27 profiles.

1 29. On information and belief, McGucken alleges that Defendants, and each
2 of them, intentionally removed and altered McGucken's violated 17 U.S.C. §1202(b)
3 before copying, reproducing, distributing, and displaying the Subject Photograph.

4 30. On information and belief, McGucken alleges that Defendants, and each
5 of them, did distribute or import for distribution copyright management information
6 knowing that the CMI has been removed or altered without authority of McGucken
7 or the law.

8 31. On information and belief, McGucken alleges that Defendants, and each
9 of them, did distribute and publicly display works and copies of works knowing that
10 copyright management information has been removed or altered without authority of
11 McGucken or the law, knowing, or, with respect to civil remedies under 17 USC §
12 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or
13 conceal an infringement of any right under this title.

14 32. On information and belief, McGucken alleges that Defendants, and each
15 of them, in violation of 17 § USC 1202(a), knowingly and with the intent to induce,
16 enable, facilitate, or conceal infringement provided false copyright management
17 information when they added their own logos, names, bylines, and attribution to the
18 Subject Photograph.

19 33. On information and belief, McGucken alleges that Defendants, and each
20 of them knew, that they were providing false copyright management information to
21 its copies of the Subject Photograph and distributing copyright management
22 information that was false at the time it distributed its unauthorized copies of the
23 Subject Photograph.

24 34. The above conduct is in violation of the Digital Millennium Copyright
25 Act and exposes Defendants, and each of them, to additional and enhanced common
26 law and statutory damages, attorneys' fees, and penalties pursuant to 17 USC § 1203
27 and other applicable law.

35. On information and belief, McGucken alleges that Defendants, and each of their, conduct as alleged herein was willful, reckless, and/or with knowledge, and McGucken resultantly seeks enhanced damage and penalties.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

Against all Defendants, and Each with Respect to Each Claim for Relief:

- a. That Defendants, and each of them, as well as their employees, agents, or anyone acting in concert with them, be enjoined from infringing McGucken's copyrights in the Subject Photograph, including without limitation an order requiring Defendants, and each of them, to remove any content incorporating, in whole or in part, the Subject Photograph from any print, web, or other publication owned, operated, or controlled by any Defendant.
- b. That McGucken be awarded all profits of Defendants, and each of them, plus all losses of McGucken, plus any other monetary advantage gained by the Defendants, and each of them, through their infringement, the exact sum to be proven at the time of trial, and, to the extent available, statutory damages as available under the 17 U.S.C. § 504, 17 U.S.C. §1203, and other applicable law.
- c. That a constructive trust be entered over any revenues or other proceeds realized by Defendants, and each of them, through their infringement of McGucken's intellectual property rights;
- d. That McGucken be awarded his attorneys' fees as available under the Copyright Act U.S.C. § 505 et seq.;
- e. That McGucken be awarded his costs and fees under the above statutes;
- f. That McGucken be awarded statutory and enhanced damages under the statutes set forth above;

- 1 g. That McGucken be awarded pre-judgment interest as allowed by law;
- 2 h. That McGucken be awarded the costs of this action; and
- 3 i. That McGucken be awarded such further legal and equitable relief as the
4 Court deems proper.

5 Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
6 38 and the 7th Amendment to the United States Constitution.

7 Respectfully submitted,

8
9 Dated: August 4, 2022

DONIGER / BURROUGHS

10 By: /s/ Scott Alan Burroughs
11 Scott Alan Burroughs, Esq.
12 Trevor W. Barrett, Esq.
13 Frank R. Trechsel, Esq.
Attorneys for Plaintiff

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Subject Photograph



Exhibit B**Infringing Use**

scribd.com/read/560681910/Lonely-Planet-USA-s-Best-Trips#_search-menu_126191

SCRIBD

Route 66

Cascade Drive 4–5 Days
Highway 101 Oregon Coast 7 Days



Oxbow Bend, Grand Teton National Park
HANE STREET/SHUTTERSTOCK ©

Chicago
Wilmington & the Gemini Giant
Springfield
St Louis
Meramec Caverns
Kansas
Oklahoma Route 66 Museum
Devil's Rope Museum
Amarillo
Tucumcari
Albuquerque
Petrified Forest National Park
Oatman
Amboy
Barstow
Santa Monica

Enjoying this preview? Become a member to read the full title.
Join today and read free for 30 days. Need help?

Start Your Free Trial

2 pages (<1 min) left in this chapter

PAGE 53 OF 1385

4% read